

Translation

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 13175WO/ko	FOR FURTHER ACTION	See Form PCT/IPEA/416
International application No. PCT/EP2004/003399	International filing date (day/month/year) 31.03.2004	Priority date (day/month/year) 02.04.2003
International Patent Classification (IPC) or national classification and IPC		
Applicant BIOPLANTA ARZNEIMITTEL GMBH		

1.	This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.																								
2.	This REPORT consists of a total of <u>6</u> sheets, including this cover sheet.																								
3.	This report is also accompanied by ANNEXES, comprising: <p>a. <input checked="" type="checkbox"/> (sent to the applicant and to the International Bureau) a total of <u>6</u> sheets, as follows:</p> <p><input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>																								
4.	This report contains indications relating to the following items: <table border="0"> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. I</td> <td>Basis of the report</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table>	<input checked="" type="checkbox"/>	Box No. I	Basis of the report	<input type="checkbox"/>	Box No. II	Priority	<input checked="" type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/>	Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input type="checkbox"/>	Box No. VI	Certain documents cited	<input type="checkbox"/>	Box No. VII	Certain defects in the international application	<input type="checkbox"/>	Box No. VIII	Certain observations on the international application
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Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

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Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language _____, which is the language of a translation furnished for the purposes of:
- ☐ international search (Rule 12.3 and 23.1(b))
- ☐ publication of the international application (Rule 12.4)
- ☐ international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the elements of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:
- ☐ the international application as originally filed/furnished
- ☒ the description:
- pages 2, 3, 5-8 _____ as originally filed/furnished
- pages* 1, 4 _____ received by this Authority on 17.01.2005 with letter of 17.01.2005
- pages* _____ received by this Authority on _____
- ☒ the claims:
- nos. _____ as originally filed/furnished
- nos.* _____ as amended (together with any statement) under Article 19
- nos.* 1-16 _____ received by this Authority on 17.01.2005 with letter of 17.01.2005
- nos.* _____ received by this Authority on _____
- ☐ the drawings:
- sheets _____ as originally filed/furnished
- sheets* _____ received by this Authority on _____
- sheets* _____ received by this Authority on _____
- ☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

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Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

- ☐ the entire international application
- ☒ claims Nos. 1-16 (in respect of industrial applicability)

because:

- ☒ the said international application, or the said claims Nos. 1-16
relate to the following subject matter which does not require an international preliminary examination (*specify*):

Claims 1-16 relate to subject matter which, in the opinion of this Authority, falls under PCT Rule 67.1(iv). Consequently, no expert opinion has been established in respect of the industrial applicability of the subject matter of said claims (PCT Article 34(4)(a)(i)).

- ☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. _____ are so unclear that no meaningful opinion could be formed (*specify*):

- ☐ the claims, or said claims Nos. _____ are so inadequately supported by the description that no meaningful opinion could be formed.

- ☐ no international search report has been established for said claims Nos. _____

- ☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form ☐ has not been furnished
☐ does not comply with the standard

the computer readable form ☐ has not been furnished
☐ does not comply with the standard

- ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.

- ☐ See Supplemental Box for further details.

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Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	1-16	YES
	Claims		NO
Inventive step (IS)	Claims	1-16	YES
	Claims		NO
Industrial applicability (IA)	Claims		YES
	Claims	1-16	NO

2. Citations and explanations (Rule 70.7)

On the assumption that the priority of the present application is valid, the P document cited in the international search report has been disregarded during the PCT procedure.

Reference is made to the following documents:

- D1: WO 02/30404 A (KAPOOR RAKESH; BERRUTI ALESSANDRA (CA); BIORIGINAL FOOD & SCIENCE COR)
18 April 2002 (2002-04-18)
- D2: US 2002/004074 A1 (BAKAL ABRAHAM I ET AL)
10 January 2002 (2002-01-10)
- D3: YOSHINO K ET AL: "ANTIOXIDATIVE AND HYPOLIPIDEMIC EFFECTS OF DIETARY GREEN TEA POLYPHENOLS IN DDY MICE FED FISH OIL-RICH DIET", SHOKUHN EISEIGAKU ZASSHI, NIPPON SHOKUHN EISEI GAKKAI, TOKYO, JP, vol. 39, no. 3, June 1998 (1998-06), pages 192-198, XP009033072 ISSN: 0015-6426
- D4: DATABASE WPI Section Ch, Week 200205 Derwent Publications Ltd., London, GB; Class B04, AN 2002-035004 XP002290855
& CN 1 311 028 A (WANG X)
5 September 2001 (2001-09-05)

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Box No. V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

D5: CARLSON JOSEPH J ET AL: "The effect of a supplement containing Ginkgo biloba (Gb), fish oil (DHA) and gotu kola (Gk) on platelet function in older healthy adults", FASEB JOURNAL, vol. 16, no. 4, 20 March 2002 (2002-03-20), page A646, XP009034771 & ANNUAL MEETING OF THE PROFESSIONAL RESEARCH SCIENTISTS ON EXPERIMENTAL BIOLOGY; NEW ORLEANS, LOUISIANA, USA; APRIL 20-24, 2002
ISSN: 0892-6638.

Unless stated otherwise, the relevant passages are those cited in the international search report.

PCT Article 33(2): The subject matter of **claims 1-16** can be considered novel (PCT Article 33(2)).

None of the documents D1 to D5, cited in the international search report, discloses the use of omega-3 fatty acids for increasing the bioavailability of secondary plant ingredients.

PCT Article 33(3): The subject matter of **claims 1-16** can be considered inventive (PCT Article 33(3)).

The problem addressed by the present invention is that of increasing the bioavailability of secondary plant ingredients.

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Box No. V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

The available prior art (D1 to D5) contains nothing to indicate that this problem can be solved by using omega-3 fatty acids, as disclosed in the present application (example 5, table 1).

PCT Article 33(3): The PCT Contracting States do not have uniform criteria for assessing the industrial applicability of **claims 1-16** in its present form. Patentability may also depend on the wording of the claims. The EPO, for example, does not recognise the industrial applicability of claims to the medical use of a compound; it may, however, allow claims to the first medical application of a known compound or to the use of such a compound in the manufacture of a drug for a new medical application.